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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,969	09/08/2004	Jeroen Karel Verbrugge	13877/13501	6946

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KENYON & KENYON LLP
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EXAMINER

HICKS, ROBERT J

ART UNIT	PAPER NUMBER
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3709

MAIL DATE	DELIVERY MODE
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07/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/506,969

Applicant(s)

VERBRUGGE ET AL.

Examiner

Robert J. Hicks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 12/9/2004 & 2/23/2006.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure:

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because the length of the abstract is over 150 words. Correction is required. See MPEP § 608.01(b).

Drawings

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Reference 12 for breakable connection.
5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because:

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- a. Reference characters "102 a" and "103" have both been used to designate first covering part, and
- b. Reference characters "102 b" and "104" have both been used to designate second covering part.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

6. Claim 3 is objected to because of the following informalities: The phrase "in such a manner as to form a seal" is unclear.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claim mentions a coupling means on the first

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lid that can be easily broken, but the drawings in the description does not clearly state where the coupling is located.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Regarding claim 1, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

12. Claim 3 recites the limitation "edge of the container" in claim 1. There is insufficient antecedent basis for this limitation in the claim, because there is no mention of an edge in claim 1.

13. Claim 12 recites the limitation "coupling means" in claim 1. There is insufficient antecedent basis for this limitation in the claim, because there is no mention of a coupling means in claim 1.

13. Claim 24 is objected to under 37 CFR 1.75(c) as being in improper form because a dependent claim does not include all of the limitations of the claim for which it depends. See MPEP § 608.01(n). Accordingly, claim 24 has not been further treated on the merits.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

16. Claims 1-2, 4-12, 14-22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern et al. (U.S. Patent No. 6,102,235) [hereinafter Stern] in view of Luburic (Canadian Patent No. 2,379,436).

17. Regarding Claim 1, Stern is a paint container tray with an integral lid, and the patent to Stern teaches the following:

Packaging for a substance which is applied to a base using a roller (19) or the like, such as paint, which packaging comprises: a container (13) for the substance, with an open top side (9), and a plastic lid (1) on the top side of the container, which lid comprises: a first covering part (21); and a second covering part (3) the first covering part being provided on the underside with a region with a substance-distributing profile (31), and it being possible for the first covering part to be pivoted

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open about a hinge (87), which is located between the first covering part and the second covering part, in such a manner that, to use the substance-distributing profile, the first covering part can be positioned at an angle (Fig. 1) with respect to the second covering part, which remains connected to the container, , the hinge between the first covering part and the second covering part being integrally moulded as part of the lid.

Stern does not teach that the lid is formed integrally from plastic by injection moulding, or that the hinge is being leak tight with respect to the substance; however, Luburic is a hinged lid in combination with a container, and the patent to Luburic discloses that the lid and container are "...fabricated by injection molding ... preferably to provide a suitably strong, lightweight, liquid-tight assembly" (**Luburic**, Page 5 Lines 19-21). At the time of the invention, it would have been obvious to one of ordinary skill in the art to manufacture the lid on the Stern paint roller tray out using an injection molding process, as suggested by Luburic, so that the container substance does not leak out, and that the lid is made into a one-piece model.

18. Regarding Claim 2, in the Stern and Luburic combination, Stern teaches that the hinge extends transversely over the entire lid (**Stern**, Fig. 7).

19. Regarding Claim 4, in the Stern and Luburic combination, Stern teaches the first covering part (**Stern**, 21) has a protective rim (**Stern**, 25) which protective rim is located on the underside of the first covering part and extends around the region with the substance-distributing profile, with the exception of the side on which the hinge is located (**Stern**, Fig. 1).

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20. Regarding Claim 5, in the Stern and Luburic combination, Stern teaches the protective rim (**Stern**, 25) is substantially U-shaped in cross section, preferably substantially at right angles with respect to the plane of the lid, with the open side facing towards the first covering part, while the first covering part is interrupted over the width of the protective rim (**Stern**, Fig. 1).

21. Regarding Claims 6-7, in the Stern and Luburic combination, Stern teaches the protective rim (**Stern**, 25) is designed and arranged in such a manner that this protective rim interacts with parts of the side walls of the container which bear against the outside of the protective rim, in order to form a seal. (**Stern**, Col 5 Lines 44-46) The design of the bottom of the protective rim protrudes down into the opening of the lid, and can form a seal with the container.

22. Regarding Claim 8, in the Stern and Luburic combination, Stern teaches in the lid there are ribs (**Stern**, 35) for increasing stiffness of the packaging or parts of the packaging.

23. Regarding Claim 9, in the Stern and Luburic combination, Luburic teaches the coupling means for the second covering part (**Luburic**, 32) is designed as a integral locking rim (**Luburic**, 33), which during use of the packaging, retains the connection between the second covering part and the container. If the tear strip is not used on the package, the tear strip can be described as a locking rim.

24. Regarding Claim 10, in the Stern and Luburic combination, Stern teaches the coupling means for the first covering part (**Stern**, 103) is designed for easily releasable coupling and is provided with a seal, which can be broken prior to first use. The

examiner interprets the connection of the coupling means (**Stern**, 103) and the tabs (**Stern**, 111) as a seal that can be easily broken.

25. Regarding Claim 11, in the Stern and Luburic combination, Stern teaches that the coupling means are designed to form a click-fit connection to the container. The design of the coupling means for Stern reference (**Stern**, 103 and 111) show that the connection can be a click-fit or a snap-fit.

26. Regarding Claim 12, in the Stern and Luburic combination, Stern teaches that the container (**Stern**, 13) and the lid (**Stern**, 1) are substantially rectangular in shape.

27. Regarding Claim 14, in the Stern and Luburic combination, Stern teaches the dimension of the first covering part (**Stern**, 21) in the plane of the lid (**Stern**, 1), perpendicular to the hinge, is approximately three times as great as the dimension of the second covering part, as taught by Luburic (**Luburic**, 32) in the plane of the lid, perpendicular to the hinge (**Stern**, Fig. 1).

28. Regarding Claim 15, in the Stern and Luburic combination, Stern teaches the opening in the container (**Stern**, 9) which is opened up after the first covering part (**Stern**, 21) has been pivoted open is sufficiently large for a standard roller (**Stern**, 19) for applying a substance to a base to be able to fit through it easily.

29. Regarding Claim 16, in the Stern and Luburic combination, Stern teaches the lid (**Stern**, 1) has a projecting rim (**Stern**, 23) on the top side.

30. Regarding Claim 17, in the Stern and Luburic combination, Stern teaches the projecting rim (**Stern**, 23) extends along the entire periphery of the lid, and is interrupted at the location of the hinge (**Stern**, 87).

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31. Regarding Claim 18, in the Stern and Luburic combination, Stern teaches the base of the container (**Stern**, 13) has a space for receiving the projecting rim (**Stern**, Fig. 15).

32. Regarding Claim 19, in the Stern and Luburic combination, Stern teaches the projecting rim (**Stern**, 23) is designed as a locating rim, which acts in combination with the space in the base of the container (**Stern**, 13).

33. Regarding Claim 20, in the Stern and Luburic combination, Stern teaches the supporting of the first covering part at an angle with respect to the second covering part is realized by supporting elements (**Stern**, 55 and 59) which are integrated with the first covering part and the second covering part, respectively.

34. Regarding Claim 21, in the Stern and Luburic combination, Luburic teaches the projecting rim (**Luburic**, 33) on the second covering part forms a supporting element.

35. Regarding Claim 22, in the Stern and Luburic combination, Stern teaches the lid comprises at least one connecting member (**Stern**, 47) which is responsible for fixing the first covering part at an angle with respect to the second covering part.

36. Regarding Claim 24, in the Stern and Luburic combination, Stern teaches a lid (**Stern**, 1), which can be placed on a container (**Stern**, 13).

37. Claims 3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern and Luburic as applied to claim 2 above, and further in view of Rich (U.S. Patent No. 3,412,890). The Stern and Luburic combination does not expressly teach projections at each location where the hinge ends; however, Rich is a hinged closure container with projections, and the patent to Rich discloses the projections at the end of

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the hinge in Figure 5 Reference 38. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the hinge ends of the Stern and Luburic combination lid with projections, as suggested by Rich, so that a seal can be formed at the location of the hinges, and so the protrusions can be broken off when the container is first used.

38. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stern and Luburic as applied to claim 1 above, and further in view of Lallement et al. (Pre-Grant Publication No. 2001/0013518) [hereinafter Lallement].

Although the Stern and Luburic combination teaches the substance-distributing profile is formed by ribs (**Stern**, 35), which project downwards out of the plane of the lid and that recesses are formed in the lid, the combination does not expressly teach the recesses formed on the top side of the lid. However, Lallement is a paint tray with roller holding means, and the patent application to Lallement teaches, "...rounded indentations projecting alternately upwards and downwards ..." (**Lallement**, Paragraph 41 Lines 4-5). At the time of the invention, it would have been obvious at the time of the invention to modify the top of the lid on the Stern and Luburic combination with the alternating rounded indentations, as suggested by Lallement, so that there would be a special design associated with the container.

Conclusion

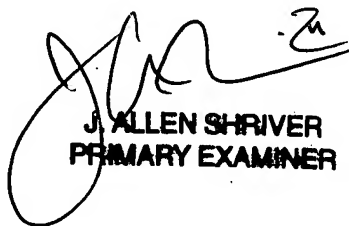
39. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 Notice of References Cited for prior art considered pertinent to the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Hicks whose telephone number is (571) 270-1893. The examiner can normally be reached on Monday-Friday, 7:30 AM - 5:00 PM, Alt Friday, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jackson can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Robert Hicks/RH
7/2/2007


J. ALLEN SHRIVER
PRIMARY EXAMINER